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Mr. Thomas Dowd
Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW
Room N-5641
Washington, DC 20210

Dear Mr. Dowd:

The purpose of this letter is to respond to your request for written comments on the proposed changes by the U.S. Department of Labor to the H-2A non-immigrant agricultural worker program.

Although I have long been a critic (based on historical experience) of the general use of temporary foreign worker programs in any industry as a means to supply workers to American employers, I have recognized the need to have such programs as the H-2A program available in legislation for use in special cases in specific circumstances. I have written extensively on this subject and have testified before Congress on several occasions as well as having testified and submitted invited comments before the Select Commission on Immigration and Refugee Policy and the Commission on Immigration Reform (on this subject as well as other immigration labor market policies).

With reference to the H-2A program, I have recognized that there may certain emergency circumstances dealing with spot shortages that can occur due to seasonal shortages in isolated rural labor markets that may warrant its existence. But these usages should be the exception rather than the rule. H-2A workers should only be used in extraordinary cases; not ordinary cases. The U.S. Department of Labor's approval of such requests should always bear this in mind as its primary concerns always should be the best interests of American farmworkers (i.e., those who are native born citizens, naturalized citizens and permanent resident aliens). It is not the purpose of these programs simply to comply with the wishes of employers, foreign governments or foreign workers whose interests differ completely from those of American workers.

With respect to the proposed changes at hand, it would seem that they are largely designed to weaken the protections in the existing law that serve to guarantee that first recourse must always be to the recruitment of American workers and that assure the forces of a free and competitive labor market are not undermined. The proposal to redefine the “adverse effect wage rate” so that it is the minimum wage only for H-2A workers seems intended to find a way to lower the rates that are paid to American workers. No competing American worker should have to work for less. The proposed changes seem to permit such unfair wages to be provided. If there is any doubt, the doubt should always favor protecting the operation of the free market for American workers to set rates. Otherwise, the H-2A program could be used to serve as a self-fulfilling prophesy whereby employers contend they cannot find American workers, not for lack of availability, but because their wages rates have been artificially depressed.

The same concerns arise with the proposals to change the “labor certification” process that has long been used to a new one based on “labor attestation” whereby employers only need state that they have made a good faith search effort to find local workers. It would be nice to believe that such trust would suffice; but the decades of history documenting the absence of such trustworthiness fill library shelves. While some employers certainly could be trusted, it stretches the boundaries of credulity to believe that most can. The logic of the existing law is based on experience; changes should not be based on wishful thinking.

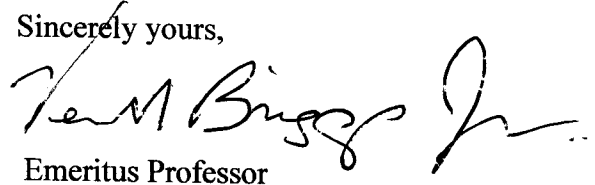
The idea that employers of H-2A workers could substitute housing vouchers for the actual provision of housing for such workers is simply ill-conceived. Too often there is no place to use such vouchers because there is no off-site housing locally available. The provision of housing for H-2A workers has always been the *quid pro quo* for being to be able to bring foreign workers in the United States for temporary periods. Vouchers do not make housing appear in rural areas – especially areas dominated by large corporate farms. It is bad enough now that illegal immigrants sleep in the trees of orchards or in plastic garbage bags in fields. It is unthinkable that the government would now force guestworkers *de facto* to do the same. Adequate housing has been a fundamental prerequisite for allowing the H-2A program to exist at all. It should continue to be.

Lastly, the proposal to shift the statistical basis for local wage calculations from information traditionally provided by the U.S. Department of Agriculture surveys to those of the Bureau of Labor Statistics of the U.S. Department of Labor raises serious concerns over relevancy. The establishment survey of the BLS essentially excludes agricultural employers so what is the relevancy of the data collected? The data sources used by the Department of Agriculture do have serious problems of collection adequacy but at least they are derived from agricultural enterprises. I cannot conceive why non-relevant data from non-agricultural enterprises (or data possibly provided by labor contractors of dubious quality) would be a more accurate measure from what is now used. Much more basic research would have to be done before such a shift should be undertaken. There is far too much uncertainty associated with what the effects of this data shift would be.

For these reasons, I would urge that these changes not be made. Illegal immigration is already eroding the operations of the nation's agricultural labor market. All of the proposed changes would only serve to further distort this troubled market. None seem to be concerned with the well-being of American farmworkers. Indeed, in my view, they would make matters worse.

I thank you for the consideration of my views.

Sincerely yours,

A handwritten signature in black ink, reading "Tom M. Bragg Jr." with a stylized flourish at the end.

Emeritus Professor